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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,370	06/25/2003	Gerd Kellner	16703	2803
23389	7590	05/05/2005	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/603,370

**Applicant(s)**

KELLNER, GERD

**Examiner**

Bret C Hayes

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☒ Claim(s) 2,3,30,41 and 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 2 and 30 are objected to because of the following informalities: line 2, “the portion” should be --the first portion--, or --the second portion--, as appropriate, to better avoid uncertainty. Appropriate correction is required.
2. Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 3 recites the same limitations as claim 2 except for “the first portion” in line 2, as indicated above.
3. Claim 41 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 41 recites the same limitations as claim 40 except for “and” in line 1.
4. Claim 53 is objected to because of the following informalities: lines 1 and 2, “a n” should be --an--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. Claims 1 – 55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not

Art Unit: 3644

described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, claim 1 recites “active elements” to replace the previously rejected “active means” recitation. There appears to be no support in the disclosure for this limitation. Further, it is impossible to decipher what an ‘active element’ exactly includes and/or excludes. In other words, the metes and bounds of the claims are indeterminable.

6. Any unspecified claim is rejected as being dependent upon a rejected base claim.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 4 – 17, 19 – 23, 26, 30 – 39, 43 – 45, 48 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 4 recites the limitation “HC charge” and “P-charge”, which is unclear. The claims language should be such that it can be readily and easily understood. Examiner suggests literally spelling out what the metes and bounds of “HC” and “P” charges are exactly. Further, at lines 2 and 3, the recitation “contains as the active elements an explosive charge” is unclear. How can active elements be an explosive charge? For purposes of examination, the various charges will be considered to be obvious variants of each other barring evidence to the contrary.

10. Claim 5 recites the limitation “integrated therein” in line 3 in unclear. Integrated in the active elements or in the munition device itself? For purposes of examination, this claim and its dependent claims will not be further treated on the merits.

Art Unit: 3644

11. Claim 7 recites “comprises asymmetrically firing acceleration charge” in line 3, which is unclear. Does the claim intend to include *a* symmetrically firing acceleration charge, or asymmetrically firing *an* acceleration charge? At least one article, either “a” or “an”, should be employed to clarify the metes and bounds of the claim.

12. Claim 9 recites “means for directional controlling in respect of fragments” in line 2, which is unclear. What does ‘directional control in respect of fragments’ mean with respect to the metes and bounds of the base claim? For purposes of examination, this claim will not be further treated on the merits.

13. Regarding claims 10 and 11, the word “means” is preceded by the word(s) “active” in an attempt to use a “means” clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding “means,” it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Further regarding claim 10, the recitation of “the same” in lines 3 and 4 lacks antecedent basis in the claim. Also, for clarity, examiner suggests --similar and different material--, either with respect to other fragments or the munition device itself. Further still, is the limitation “of equal and different sizes of the same and different material” intended to also limit the spherical, cuboidal and cylindrically shaped bodies recited in lines 2 – 3, or merely the fragments? For purposes of examination, these claims and their dependent claims will not be further treated on the merits.

14. Claim 15 recites the limitation “the active elements comprise at least one disk-shaped element”, which is unclear. See the rejection of claim 4 above. Further, at line 3, “optional contains” should be --optionally contains--, for clarity. Further still, at lines 3 and 4,

Art Unit: 3644

“reacting/pressure-producing” should be clarified as one or the other, or as one and the other.

For purposes of examination, this claim will not be further treated on the merits.

15. Re – claims 16 and 17, it is improper to attempt to broaden a singular element, such as, “a first portion”, into a plurality of elements, such as, “a plurality of said first portions” because the recitation of “said first portions” lacks antecedent basis in the claims. The base claim should recite the element as being --at least one--, which can properly be broadened to include a plurality. For purposes of examination, this is how the claims will be interpreted.

16. Claim 19 recites the limitation “at least one of a positionally controlled and time-controlled safety and firing system”, which is unclear. It cannot be ascertained with clarity which is the “at least one”. Is it at least one of a positionally controlled safety and firing system and a time-controlled safety and firing system, or at least one of a positionally controlled and time-controlled safety and a firing system? For purposes of examination, this claim will not be further treated on the merits.

17. Re – claim 20, “a plurality of said pressure-producing elements” lacks antecedent basis in the claim. Examiner suggests --said at least one pressure-producing element being a plurality of pressure-producing elements--, for clarity. Further, the recitation “ the pressure-producing elements are selectively actuated separately or are connected together...” is unclear. How does being selectively actuated rule out the possibility of being connected together? For purposes of examination, this claim will not be further treated on the merits.

18. Regarding claim 21, the word "means" is preceded by the word(s) "contact", "mechanical", "optical", "electronic", "radio", and "radar" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no

Art Unit: 3644

function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). For purposes of examination, this claim will not be further treated on the merits.

19. Claim 22 recites the limitation "upon launch or during the flight phase" which appears to be redundant. Examiner suggests revising the claim to either --after launch-- or --during a flight phase--, for clarity. For purposes of examination, this is how the claim will be interpreted.

20. Re – claim 26, see rejection of claim 4 above. For purposes of examination, the claim will be interpreted to mean 'penetrator with enhanced lateral effect' as disclosed.

21. Regarding claim 30, the word "means" is followed by the word(s) "homogeneous material", "preformed fragments", "submunitions", and "independently operative penetrators" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) following "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). For purposes of examination, this claim will not be further treated on the merits.

22. Claim 31 recites the limitation "different coverings provided over at least one of the periphery and the length" which is unclear – a periphery and a length of what? For purposes of examination, this claim will not be further treated on the merits.

23. Regarding claim 32, the word "means" is preceded by the word(s) "liquid active", and "solid active" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s)

Art Unit: 3644

preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). For purposes of examination, this claim will not be further treated on the merits.

24. Re – claims 33 and 43, the recitation “steel, hard metal and heavy metal”, or similar, is unclear. As materials go, steel is both a hard metal and a heavy metal. For purposes of examination, the claims will be interpreted to include steel and its obvious variants.

25. Re – claim 35, the recitation “the core tip” lacks antecedent basis in the claim. For purposes of examination, this claim will not be further treated on the merits.

26. Re – claim 36, the recitation “said...core tip” lacks antecedent basis in the claim. For purposes of examination, this claim will not be further treated on the merits.

27. Re – claim 45, the recitation “the module” lacks antecedent basis in the claims.

28. Regarding claim 48, the word "means" is preceded by the word(s) "safety self-destruct" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). For purposes of examination, this claim will not be further treated on the merits.

29. Claim 55 recites the limitation “at least one active component as set forth in claim 1” which is unclear as there is no active component recited in claim 1. Further, at line 2, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). For purposes of examination, this claim will not be further treated on the merits.



Art Unit: 3644

30. Any unspecified claim is rejected as being dependent upon a rejected base claim.

31. Examiner suggests revisiting and revising the claims and specification to more clearly describe Applicant's claimed invention before a proper and thorough search of the prior art is undertaken.

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***Conclusion***

32. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

Art Unit: 3644

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571)272 – 7045. The fax number is (703) 872 – 9306.

bh

5/1/05



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER